

AMENDED IN ASSEMBLY MAY 6, 2014

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 2363**

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**Introduced by Assembly Member Dahle**  
**(Principal coauthor: Assembly Member Alejo)**  
**(Coauthors: Assembly Members Bradford, Jones, and Patterson)**

February 21, 2014

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An act to amend Sections 399.13, ~~399.15~~, and 454.5 of the Public Utilities Code, relating to energy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2363, as amended, Dahle. Electricity procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing board. The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program.

The Public Utilities Act requires the Public Utilities Commission to review and adopt an overall procurement plan for each electrical corporation to meet electricity demand for its customers in accordance with specified elements, incentive mechanisms, and objectives. The act requires the Public Utilities Commission to review and accept, modify,

or reject each electrical corporation's procurement plan and requires that each approved procurement plan accomplish specified objectives.

This bill would require the Public Utilities Commission to direct electrical corporations to include in their proposed procurement plans the use of any nonzero integration cost adders, as specified.

(2) The California Renewables Portfolio Standard Program requires a retail seller, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, as specified, referred to as the portfolio content requirements. The program requires the commission to adopt, by rulemaking, a process that provides criteria for the rank ordering and selecting of least-cost and best-fit eligible renewable energy resources to comply with the program obligations on a total cost basis, taking into account specified matter. ~~Existing law authorizes the commission to require a retail seller to procure eligible renewable energy resources in excess of the specified minimum quantities of electricity products of the renewables portfolio standard.~~

This bill additionally would require the commission to adopt, by rulemaking, by October 1, 2015, a nonzero integration cost adder methodology that reflects a reasonable estimate of the costs of procuring capacity and energy required to accommodate the electrical generation of the particular eligible renewable energy resource. ~~The bill would require the commission to consider the nonzero integration cost adder methodology prior to approving any procurement of eligible renewable energy resources by a retail seller that is in excess of the specified minimum quantities of electricity products required to be purchased pursuant to the renewables portfolio standard.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

1 (a) California is leading the world in adopting comprehensive  
2 programs that reduce emissions of greenhouse gases, including  
3 passage of the California Global Warming Solutions Act of 2006  
4 (Division 25.5 (commencing with Section 38500) of the Health  
5 and Safety Code) and the California Renewables Portfolio Standard  
6 Program (Article 16 (commencing with Section 399.11) of Chapter  
7 2.3 of Part 1 of Division 1 of the Public Utilities Code).

8 (b) The state has an abundant supply of renewable energy  
9 resources, including geothermal, biomass, biomethane, wind, and  
10 solar, that ~~have~~ *has* contributed to the state's ability to reduce its  
11 emissions of greenhouse gases and meet its renewables portfolio  
12 standard procurement targets.

13 (c) It is in the public's interest that the state continue to promote  
14 policies to ensure eligible renewable energy resources be procured  
15 and contributed to the state's ability to reduce its greenhouse gas  
16 emissions and meet the targets of the California Renewables  
17 Portfolio Standard Program (Article 16 (commencing with Section  
18 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities  
19 Code).

20 (d) There are eligible renewable energy resources in the state  
21 that, if developed and retained, would not require additional  
22 capacity to maintain the reliability of the bulk electrical system  
23 and could generate during periods in which electricity is likely to  
24 be the most valuable, prospectively.

25 (e) Procuring and retaining a diversified portfolio of eligible  
26 renewable energy resources may do all of the following:

27 (1) Assist electrical corporations in satisfying renewable energy  
28 procurement and greenhouse gases emissions reductions goals in  
29 a cost-effective manner.

30 (2) Partially meet peak load requirements with electricity  
31 generated by eligible renewable energy resources, which will have  
32 substantial benefits from reduced emissions of greenhouse gases,  
33 and cobenefits from reduced emissions of criteria pollutants.

34 (3) Maintain the reliability of the electrical grid to meet demand  
35 for electricity on a 24-hour basis.

36 (4) Contribute to local employment and economic growth  
37 throughout the state.

38 SEC. 2. Section 399.13 of the Public Utilities Code is amended  
39 to read:

1 399.13. (a) (1) The commission shall direct each electrical  
2 corporation to annually prepare a renewable energy procurement  
3 plan that includes the matter in paragraph (5), to satisfy its  
4 obligations under the renewables portfolio standard. To the extent  
5 feasible, this procurement plan shall be proposed, reviewed, and  
6 adopted by the commission as part of, and pursuant to, a general  
7 procurement plan process. The commission shall require each  
8 electrical corporation to review and update its renewable energy  
9 procurement plan as it determines to be necessary.

10 (2) Every electrical corporation that owns electrical transmission  
11 facilities shall annually prepare, as part of the Federal Energy  
12 Regulatory Commission Order 890 process, and submit to the  
13 commission, a report identifying any electrical transmission  
14 facility, upgrade, or enhancement that is reasonably necessary to  
15 achieve the renewables portfolio standard procurement  
16 requirements of this article. Each report shall look forward at least  
17 five years and, to ensure that adequate investments are made in a  
18 timely manner, shall include a preliminary schedule when an  
19 application for a certificate of public convenience and necessity  
20 will be made, pursuant to Chapter 5 (commencing with Section  
21 1001), for any electrical transmission facility identified as being  
22 reasonably necessary to achieve the renewable energy resources  
23 procurement requirements of this article. Each electrical  
24 corporation that owns electrical transmission facilities shall ensure  
25 that project-specific interconnection studies are completed in a  
26 timely manner.

27 (3) The commission shall direct each retail seller to prepare and  
28 submit an annual compliance report that includes all of the  
29 following:

30 (A) The current status and progress made during the prior year  
31 toward procurement of eligible renewable energy resources as a  
32 percentage of retail sales, including, if applicable, the status of any  
33 necessary siting and permitting approvals from federal, state, and  
34 local agencies for those eligible renewable energy resources  
35 procured by the retail seller, and the current status of compliance  
36 with the portfolio content requirements of subdivision (c) of  
37 Section 399.16, including procurement of eligible renewable energy  
38 resources located outside the state and within the WECC and  
39 unbundled renewable energy credits.

1 (B) If the retail seller is an electrical corporation, the current  
2 status and progress made during the prior year toward construction  
3 of, and upgrades to, transmission and distribution facilities and  
4 other electrical system components it owns to interconnect eligible  
5 renewable energy resources and to supply the electricity generated  
6 by those resources to load, including the status of planning, siting,  
7 and permitting transmission facilities by federal, state, and local  
8 agencies.

9 (C) Recommendations to remove impediments to making  
10 progress toward achieving the renewable energy resources  
11 procurement requirements established pursuant to this article.

12 (4) The commission shall adopt, by rulemaking, all of the  
13 following:

14 (A) A process that provides criteria for the rank ordering and  
15 selection of least-cost and best-fit eligible renewable energy  
16 resources to comply with the California Renewables Portfolio  
17 Standard Program obligations on a total cost basis. This process  
18 shall take into account all of the following:

19 (i) Estimates of indirect costs associated with needed  
20 transmission investments and ongoing electrical corporation  
21 expenses resulting from integrating and operating eligible  
22 renewable energy resources.

23 (ii) The cost impact of procuring the eligible renewable energy  
24 resources on the electrical corporation's electricity portfolio.

25 (iii) The viability of the project to construct and reliably operate  
26 the eligible renewable energy resource, including the developer's  
27 experience, the feasibility of the technology used to generate  
28 electricity, and the risk that the facility will not be built, or that  
29 construction will be delayed, with the result that electricity will  
30 not be supplied as required by the contract.

31 (iv) Workforce recruitment, training, and retention efforts,  
32 including the employment growth associated with the construction  
33 and operation of eligible renewable energy resources and goals  
34 for recruitment and training of women, minorities, and disabled  
35 veterans.

36 (v) A nonzero integration cost adder methodology, to be initially  
37 determined by the commission no later than October 1, 2015, that  
38 reflects a reasonable estimate of the costs of procuring capacity  
39 and energy required to accommodate the electrical generation of  
40 the particular eligible renewable energy resource.

1 (B) Rules permitting retail sellers to accumulate, beginning  
2 January 1, 2011, excess procurement in one compliance period to  
3 be applied to any subsequent compliance period. The rules shall  
4 apply equally to all retail sellers. In determining the quantity of  
5 excess procurement for the applicable compliance period, the  
6 commission shall deduct from actual procurement~~quantities~~;  
7 *quantities* the total amount of procurement associated with  
8 contracts of less than 10 years in duration. In no event shall  
9 electricity products meeting the portfolio content of paragraph (3)  
10 of subdivision (b) of Section 399.16 be counted as excess  
11 procurement.

12 (C) Standard terms and conditions to be used by all electrical  
13 corporations in contracting for eligible renewable energy resources,  
14 including performance requirements for renewable generators. A  
15 contract for the purchase of electricity generated by an eligible  
16 renewable energy resource, at a minimum, shall include the  
17 renewable energy credits associated with all electricity generation  
18 specified under the contract. The standard terms and conditions  
19 shall include the requirement that, no later than six months after  
20 the commission's approval of an electricity purchase agreement  
21 entered into pursuant to this article, the following information  
22 about the agreement shall be disclosed by the commission: party  
23 names, resource type, project location, and project capacity.

24 (D) An appropriate minimum margin of procurement above the  
25 minimum procurement level necessary to comply with the  
26 renewables portfolio standard to mitigate the risk that renewable  
27 projects planned or under contract are delayed or canceled. This  
28 paragraph does not preclude an electrical corporation from  
29 voluntarily proposing a margin of procurement above the  
30 appropriate minimum margin established by the commission.

31 (5) Consistent with the goal of increasing California's reliance  
32 on eligible renewable energy resources, the renewable energy  
33 procurement plan submitted by an electrical corporation shall  
34 include all of the following:

35 (A) An assessment of annual or multiyear portfolio supplies  
36 and demand to determine the optimal mix of eligible renewable  
37 energy resources with deliverability characteristics that may include  
38 peaking, dispatchable, baseload, firm, and as-available capacity.

39 (B) Potential compliance delays related to the conditions  
40 described in paragraph (5) of subdivision (b) of Section 399.15.

1 (C) A bid solicitation setting forth the need for eligible  
2 renewable energy resources of each deliverability characteristic,  
3 required online dates, and locational preferences, if any.

4 (D) A status update on the development schedule of all eligible  
5 renewable energy resources currently under contract.

6 (E) Consideration of mechanisms for price adjustments  
7 associated with the costs of key components for eligible renewable  
8 energy resource projects with online dates more than 24 months  
9 after the date of contract execution.

10 (F) An assessment of the risk that an eligible renewable energy  
11 resource will not be built, or that construction will be delayed,  
12 with the result that electricity will not be delivered as required by  
13 the contract.

14 (6) In soliciting and procuring eligible renewable energy  
15 resources, each electrical corporation shall offer contracts of no  
16 less than 10 years duration, unless the commission approves of a  
17 contract of shorter duration.

18 (7) In soliciting and procuring eligible renewable energy  
19 resources for California-based projects, each electrical corporation  
20 shall give preference to renewable energy projects that provide  
21 environmental and economic benefits to communities afflicted  
22 with poverty or high unemployment, or that suffer from high  
23 emission levels of toxic air contaminants, criteria air pollutants,  
24 and greenhouse gases.

25 (b) A retail seller may enter into a combination of long- and  
26 short-term contracts for electricity and associated renewable energy  
27 credits. The commission may authorize a retail seller to enter into  
28 a contract of less than 10 years' duration with an eligible renewable  
29 energy resource, if the commission has established, for each retail  
30 seller, minimum quantities of eligible renewable energy resources  
31 to be procured through contracts of at least 10 years' duration.

32 (c) The commission shall review and accept, modify, or reject  
33 each electrical corporation's renewable energy resource  
34 procurement plan prior to the commencement of renewable energy  
35 procurement pursuant to this article by an electrical corporation.

36 (d) Unless previously preapproved by the commission, an  
37 electrical corporation shall submit a contract for the generation of  
38 an eligible renewable energy resource to the commission for review  
39 and approval consistent with an approved renewable energy  
40 resource procurement plan. If the commission determines that the

1 bid prices are elevated due to a lack of effective competition among  
2 the bidders, the commission shall direct the electrical corporation  
3 to renegotiate the contracts or conduct a new solicitation.

4 (e) If an electrical corporation fails to comply with a commission  
5 order adopting a renewable energy resource procurement plan, the  
6 commission shall exercise its authority pursuant to Section 2113  
7 to require compliance. The commission shall enforce comparable  
8 penalties on any retail seller that is not an electrical corporation  
9 that fails to meet the procurement targets established pursuant to  
10 Section 399.15.

11 (f) (1) The commission may authorize a procurement entity to  
12 enter into contracts on behalf of customers of a retail seller for  
13 electricity products from eligible renewable energy resources to  
14 satisfy the retail seller's renewables portfolio standard procurement  
15 requirements. The commission shall not require any person or  
16 corporation to act as a procurement entity or require any party to  
17 purchase eligible renewable energy resources from a procurement  
18 entity.

19 (2) Subject to review and approval by the commission, the  
20 procurement entity shall be permitted to recover reasonable  
21 administrative and procurement costs through the retail rates of  
22 end-use customers that are served by the procurement entity and  
23 are directly benefiting from the procurement of eligible renewable  
24 energy resources.

25 (g) Procurement and administrative costs associated with  
26 contracts entered into by an electrical corporation for eligible  
27 renewable energy resources pursuant to this article and approved  
28 by the commission are reasonable and prudent and shall be  
29 recoverable in rates.

30 (h) Construction, alteration, demolition, installation, and repair  
31 work on an eligible renewable energy resource that receives  
32 production incentives pursuant to Section 25742 of the Public  
33 Resources Code, including work performed to qualify, receive, or  
34 maintain production incentives, are "public works" for the purposes  
35 of Chapter 1 (commencing with Section 1720) of Part 7 of Division  
36 2 of the Labor Code.

37 ~~SEC. 3. Section 399.15 of the Public Utilities Code is amended~~  
38 ~~to read:~~

39 ~~399.15. (a) In order to fulfill unmet long-term resource needs,~~  
40 ~~the commission shall establish a renewables portfolio standard~~



1 ~~requiring all retail sellers to procure a minimum quantity of~~  
2 ~~electricity products from eligible renewable energy resources as~~  
3 ~~a specified percentage of total kilowatthours sold to their retail~~  
4 ~~end-use customers each compliance period to achieve the targets~~  
5 ~~established under this article. For any retail seller procuring at least~~  
6 ~~14 percent of retail sales from eligible renewable energy resources~~  
7 ~~in 2010, the deficits associated with any previous renewables~~  
8 ~~portfolio standard shall not be added to any procurement~~  
9 ~~requirement pursuant to this article.~~

10 ~~(b) The commission shall implement renewables portfolio~~  
11 ~~standard procurement requirements only as follows:~~

12 ~~(1) Each retail seller shall procure a minimum quantity of~~  
13 ~~eligible renewable energy resources for each of the following~~  
14 ~~compliance periods:~~

15 ~~(A) January 1, 2011, to December 31, 2013, inclusive.~~

16 ~~(B) January 1, 2014, to December 31, 2016, inclusive.~~

17 ~~(C) January 1, 2017, to December 31, 2020, inclusive.~~

18 ~~(2) (A) No later than January 1, 2012, the commission shall~~  
19 ~~establish the quantity of electricity products from eligible~~  
20 ~~renewable energy resources to be procured by the retail seller for~~  
21 ~~each compliance period. These quantities shall be established in~~  
22 ~~the same manner for all retail sellers and result in the same~~  
23 ~~percentages used to establish compliance period quantities for all~~  
24 ~~retail sellers.~~

25 ~~(B) In establishing quantities for the compliance period from~~  
26 ~~January 1, 2011, to December 31, 2013, inclusive, the commission~~  
27 ~~shall require procurement for each retail seller equal to an average~~  
28 ~~of 20 percent of retail sales. For the following compliance periods,~~  
29 ~~the quantities shall reflect reasonable progress in each of the~~  
30 ~~intervening years sufficient to ensure that the procurement of~~  
31 ~~electricity products from eligible renewable energy resources~~  
32 ~~achieves 25 percent of retail sales by December 31, 2016, and 33~~  
33 ~~percent of retail sales by December 31, 2020. The commission~~  
34 ~~shall require retail sellers to procure not less than 33 percent of~~  
35 ~~retail sales of electricity products from eligible renewable energy~~  
36 ~~resources in all subsequent years.~~

37 ~~(C) Retail sellers shall be obligated to procure no less than the~~  
38 ~~quantities associated with all intervening years by the end of each~~  
39 ~~compliance period. Retail sellers shall not be required to~~

1 demonstrate a specific quantity of procurement for any individual  
2 intervening year.

3 ~~(3) The commission may require the procurement of eligible~~  
4 ~~renewable energy resources in excess of the quantities specified~~  
5 ~~in paragraph (2). Prior to approving any procurement of eligible~~  
6 ~~renewable energy resources that would be in excess of the~~  
7 ~~quantities specified in paragraph (2), the commission shall consider~~  
8 ~~the nonzero integrated cost adder methodology determined pursuant~~  
9 ~~to clause (v) of subparagraph (A) of paragraph (4) of subdivision~~  
10 ~~(a) of Section 399.13.~~

11 ~~(4) Only for purposes of establishing the renewables portfolio~~  
12 ~~standard procurement requirements of paragraph (1) and~~  
13 ~~determining the quantities pursuant to paragraph (2), the~~  
14 ~~commission shall include all electricity sold to retail customers by~~  
15 ~~the Department of Water Resources pursuant to Division 27~~  
16 ~~(commencing with Section 80000) of the Water Code in the~~  
17 ~~calculation of retail sales by an electrical corporation.~~

18 ~~(5) The commission shall waive enforcement of this section if~~  
19 ~~it finds that the retail seller has demonstrated any of the following~~  
20 ~~conditions are beyond the control of the retail seller and will~~  
21 ~~prevent compliance:~~

22 ~~(A) There is inadequate transmission capacity to allow for~~  
23 ~~sufficient electricity to be delivered from proposed eligible~~  
24 ~~renewable energy resource projects using the current operational~~  
25 ~~protocols of the Independent System Operator. In making its~~  
26 ~~findings relative to the existence of this condition with respect to~~  
27 ~~a retail seller that owns transmission lines, the commission shall~~  
28 ~~consider both of the following:~~

29 ~~(i) Whether the retail seller has undertaken, in a timely fashion,~~  
30 ~~reasonable measures under its control and consistent with its~~  
31 ~~obligations under local, state, and federal laws and regulations, to~~  
32 ~~develop and construct new transmission lines or upgrades to~~  
33 ~~existing lines intended to transmit electricity generated by eligible~~  
34 ~~renewable energy resources. In determining the reasonableness of~~  
35 ~~a retail seller's actions, the commission shall consider the retail~~  
36 ~~seller's expectations for full-cost recovery for these transmission~~  
37 ~~lines and upgrades.~~

38 ~~(ii) Whether the retail seller has taken all reasonable operational~~  
39 ~~measures to maximize cost-effective deliveries of electricity from~~

1 eligible renewable energy resources in advance of transmission  
2 availability.

3 ~~(B) Permitting, interconnection, or other circumstances that~~  
4 ~~delay procured eligible renewable energy resource projects, or~~  
5 ~~there is an insufficient supply of eligible renewable energy~~  
6 ~~resources available to the retail seller. In making a finding that this~~  
7 ~~condition prevents timely compliance, the commission shall~~  
8 ~~consider whether the retail seller has done all of the following:~~

9 ~~(i) Prudently managed portfolio risks, including relying on a~~  
10 ~~sufficient number of viable projects.~~

11 ~~(ii) Sought to develop one of the following: its own eligible~~  
12 ~~renewable energy resources, transmission to interconnect to eligible~~  
13 ~~renewable energy resources, or energy storage used to integrate~~  
14 ~~eligible renewable energy resources. This clause shall not require~~  
15 ~~an electrical corporation to pursue development of eligible~~  
16 ~~renewable energy resources pursuant to Section 399.14.~~

17 ~~(iii) Procured an appropriate minimum margin of procurement~~  
18 ~~above the minimum procurement level necessary to comply with~~  
19 ~~the renewables portfolio standard to compensate for foreseeable~~  
20 ~~delays or insufficient supply.~~

21 ~~(iv) Taken reasonable measures, under the control of the retail~~  
22 ~~seller, to procure cost-effective distributed generation and allowable~~  
23 ~~unbundled renewable energy credits.~~

24 ~~(C) Unanticipated curtailment of eligible renewable energy~~  
25 ~~resources necessary to address the needs of a balancing authority.~~

26 ~~(6) If the commission waives the compliance requirements of~~  
27 ~~this section, the commission shall establish additional reporting~~  
28 ~~requirements on the retail seller to demonstrate that all reasonable~~  
29 ~~actions under the control of the retail seller are taken in each of~~  
30 ~~the intervening years sufficient to satisfy future procurement~~  
31 ~~requirements.~~

32 ~~(7) The commission shall not waive enforcement pursuant to~~  
33 ~~this section, unless the retail seller demonstrates that it has taken~~  
34 ~~all reasonable actions under its control, as set forth in paragraph~~  
35 ~~(5), to achieve full compliance.~~

36 ~~(8) If a retail seller fails to procure sufficient eligible renewable~~  
37 ~~energy resources to comply with a procurement requirement~~  
38 ~~pursuant to paragraphs (1) and (2) and fails to obtain an order from~~  
39 ~~the commission waiving enforcement pursuant to paragraph (5);~~

~~the commission shall exercise its authority pursuant to Section 2113.~~

~~(9) Deficits associated with the compliance period shall not be added to a future compliance period.~~

~~(e) The commission shall establish a limitation for each electrical corporation on the procurement expenditures for all eligible renewable energy resources used to comply with the renewables portfolio standard. In establishing this limitation, the commission shall rely on the following:~~

~~(1) The most recent renewable energy procurement plan.~~

~~(2) Procurement expenditures that approximate the expected cost of building, owning, and operating eligible renewable energy resources.~~

~~(3) The potential that some planned resource additions may be delayed or canceled.~~

~~(d) In developing the limitation pursuant to subdivision (c), the commission shall ensure all of the following:~~

~~(1) The limitation is set at a level that prevents disproportionate rate impacts.~~

~~(2) The costs of all procurement credited toward achieving the renewables portfolio standard are counted towards the limitation.~~

~~(3) Procurement expenditures do not include any indirect expenses, including imbalance energy charges, sale of excess energy, decreased generation from existing resources, transmission upgrades, or the costs associated with relicensing any utility-owned hydroelectric facilities.~~

~~(e) (1) No later than January 1, 2016, the commission shall prepare a report to the Legislature assessing whether each electrical corporation can achieve a 33-percent renewables portfolio standard by December 31, 2020, and maintain that level thereafter, within the adopted cost limitations. If the commission determines that it is necessary to change the limitation for procurement costs incurred by any electrical corporation after that date, it may propose a revised cap consistent with the criteria in subdivisions (c) and (d). The proposed modifications shall take effect no earlier than January 1, 2017.~~

~~(2) Notwithstanding Section 10231.5 of the Government Code, the requirement for submitting a report imposed under paragraph (1) is inoperative on January 1, 2021.~~

1     ~~(3) A report to be submitted pursuant to paragraph (1) shall be~~  
2     ~~submitted in compliance with Section 9795 of the Government~~  
3     ~~Code.~~

4     ~~(f) If the cost limitation for an electrical corporation is~~  
5     ~~insufficient to support the projected costs of meeting the~~  
6     ~~renewables portfolio standard procurement requirements, the~~  
7     ~~electrical corporation may refrain from entering into new contracts~~  
8     ~~or constructing facilities beyond the quantity that can be procured~~  
9     ~~within the limitation, unless eligible renewable energy resources~~  
10    ~~can be procured without exceeding a de minimis increase in rates,~~  
11    ~~consistent with the long-term procurement plan established for the~~  
12    ~~electrical corporation pursuant to Section 454.5.~~

13    ~~(g) (1) The commission shall monitor the status of the cost~~  
14    ~~limitation for each electrical corporation in order to ensure~~  
15    ~~compliance with this article.~~

16    ~~(2) If the commission determines that an electrical corporation~~  
17    ~~may exceed its cost limitation prior to achieving the renewables~~  
18    ~~portfolio standard procurement requirements, the commission shall~~  
19    ~~do both of the following within 60 days of making that~~  
20    ~~determination:~~

21    ~~(A) Investigate and identify the reasons why the electrical~~  
22    ~~corporation may exceed its annual cost limitation.~~

23    ~~(B) Notify the appropriate policy and fiscal committees of the~~  
24    ~~Legislature that the electrical corporation may exceed its cost~~  
25    ~~limitation, and include the reasons why the electrical corporation~~  
26    ~~may exceed its cost limitation.~~

27    ~~(h) The establishment of a renewables portfolio standard shall~~  
28    ~~not constitute implementation by the commission of the federal~~  
29    ~~Public Utility Regulatory Policies Act of 1978 (Public Law~~  
30    ~~95-617).~~

31    ~~SEC. 4.~~

32    ~~SEC. 3.~~ Section 454.5 of the Public Utilities Code is amended  
33    to read:

34    454.5. (a) The commission shall specify the allocation of  
35    electricity, including quantity, characteristics, and duration of  
36    electricity delivery, that the Department of Water Resources shall  
37    provide under its power purchase agreements to the customers of  
38    each electrical corporation, which shall be reflected in the electrical  
39    corporation's proposed procurement plan. Each electrical  
40    corporation shall file a proposed procurement plan with the

1 commission not later than 60 days after the commission specifies  
2 the allocation of electricity. The proposed procurement plan shall  
3 specify the date that the electrical corporation intends to resume  
4 procurement of electricity for its retail customers, consistent with  
5 its obligation to serve. After the commission's adoption of a  
6 procurement plan, the commission shall allow not less than 60  
7 days before the electrical corporation resumes procurement  
8 pursuant to this section.

9 (b) An electrical corporation's proposed procurement plan shall  
10 include, but not be limited to, all of the following:

11 (1) An assessment of the price risk associated with the electrical  
12 corporation's portfolio, including any utility-retained generation,  
13 existing power purchase and exchange contracts, and proposed  
14 contracts or purchases under which an electrical corporation will  
15 procure electricity, electricity demand reductions, and  
16 electricity-related products and the remaining open position to be  
17 served by spot market transactions.

18 (2) A definition of each electricity product, electricity-related  
19 product, and procurement related financial product, including  
20 support and justification for the product type and amount to be  
21 procured under the plan.

22 (3) The duration of the plan.

23 (4) The duration, timing, and range of quantities of each product  
24 to be procured.

25 (5) A competitive procurement process under which the  
26 electrical corporation may request bids for procurement-related  
27 services, including the format and criteria of that procurement  
28 process.

29 (6) An incentive mechanism, if any incentive mechanism is  
30 proposed, including the type of transactions to be covered by that  
31 mechanism, their respective procurement benchmarks, and other  
32 parameters needed to determine the sharing of risks and benefits.

33 (7) The upfront standards and criteria by which the acceptability  
34 and eligibility for rate recovery of a proposed procurement  
35 transaction will be known by the electrical corporation prior to  
36 execution of the transaction. This shall include an expedited  
37 approval process for the commission's review of proposed contracts  
38 and subsequent approval or rejection thereof. The electrical  
39 corporation shall propose alternative procurement choices in the  
40 event a contract is rejected.

1 (8) Procedures for updating the procurement plan.

2 (9) A showing that the procurement plan will achieve the  
3 following:

4 (A) The electrical corporation, in order to fulfill its unmet  
5 resource needs, shall procure resources from eligible renewable  
6 energy resources in an amount sufficient to meet its procurement  
7 requirements pursuant to the California Renewables Portfolio  
8 Standard Program (Article 16 (commencing with Section 399.11)  
9 of Chapter 2.3).

10 (B) The electrical corporation shall create or maintain a  
11 diversified procurement portfolio consisting of both short-term  
12 and long-term electricity and electricity-related and demand  
13 reduction products.

14 (C) The electrical corporation shall first meet its unmet resource  
15 needs through all available energy efficiency and demand reduction  
16 resources that are cost effective, reliable, and feasible.

17 (10) The electrical corporation's risk management policy,  
18 strategy, and practices, including specific measures of price  
19 stability.

20 (11) A plan to achieve appropriate increases in diversity of  
21 ownership and diversity of fuel supply of nonutility electrical  
22 generation.

23 (12) A mechanism for recovery of reasonable administrative  
24 costs related to procurement in the generation component of rates.

25 (c) The commission shall review and accept, modify, or reject  
26 each electrical corporation's procurement plan. The commission's  
27 review shall consider each electrical corporation's individual  
28 procurement situation, and shall give strong consideration to that  
29 situation in determining which one or more of the features set forth  
30 in this subdivision shall apply to that electrical corporation. A  
31 procurement plan approved by the commission shall contain one  
32 or more of the following features, provided that the commission  
33 may not approve a feature or mechanism for an electrical  
34 corporation if it finds that the feature or mechanism would impair  
35 the restoration of an electrical corporation's creditworthiness or  
36 would lead to a deterioration of an electrical corporation's  
37 creditworthiness:

38 (1) A competitive procurement process under which the  
39 electrical corporation may request bids for procurement-related  
40 services. The commission shall specify the format of that

1 procurement process, as well as criteria to ensure that the auction  
2 process is open and adequately subscribed. Any purchases made  
3 in compliance with the commission-authorized process shall be  
4 recovered in the generation component of rates.

5 (2) An incentive mechanism that establishes a procurement  
6 benchmark or benchmarks and authorizes the electrical corporation  
7 to procure from the market, subject to comparing the electrical  
8 corporation's performance to the commission-authorized  
9 benchmark or benchmarks. The incentive mechanism shall be  
10 clear, achievable, and contain quantifiable objectives and standards.  
11 The incentive mechanism shall contain balanced risk and reward  
12 incentives that limit the risk and reward of an electrical corporation.

13 (3) Upfront achievable standards and criteria by which the  
14 acceptability and eligibility for rate recovery of a proposed  
15 procurement transaction will be known by the electrical corporation  
16 prior to the execution of the bilateral contract for the transaction.  
17 The commission shall provide for expedited review and either  
18 approve or reject the individual contracts submitted by the electrical  
19 corporation to ensure compliance with its procurement plan. To  
20 the extent the commission rejects a proposed contract pursuant to  
21 this criteria, the commission shall designate alternative procurement  
22 choices obtained in the procurement plan that will be recoverable  
23 for ratemaking purposes.

24 (d) A procurement plan approved by the commission shall  
25 accomplish each of the following objectives:

26 (1) Enable the electrical corporation to fulfill its obligation to  
27 serve its customers at just and reasonable rates.

28 (2) Eliminate the need for after-the-fact reasonableness reviews  
29 of an electrical corporation's actions in compliance with an  
30 approved procurement plan, including resulting electricity  
31 procurement contracts, practices, and related expenses. However,  
32 the commission may establish a regulatory process to verify and  
33 ensure that each contract was administered in accordance with the  
34 terms of the contract, and contract disputes that may arise are  
35 reasonably resolved.

36 (3) Ensure timely recovery of prospective procurement costs  
37 incurred pursuant to an approved procurement plan. The  
38 commission shall establish rates based on forecasts of procurement  
39 costs adopted by the commission, actual procurement costs  
40 incurred, or combination thereof, as determined by the commission.



1 The commission shall establish power procurement balancing  
2 accounts to track the differences between recorded revenues and  
3 costs incurred pursuant to an approved procurement plan. The  
4 commission shall review the power procurement balancing  
5 accounts, not less than semiannually, and shall adjust rates or order  
6 refunds, as necessary, to promptly amortize a balancing account,  
7 according to a schedule determined by the commission. Until  
8 January 1, 2006, the commission shall ensure that any  
9 overcollection or undercollection in the power procurement  
10 balancing account does not exceed 5 percent of the electrical  
11 corporation's actual recorded generation revenues for the prior  
12 calendar year excluding revenues collected for the Department of  
13 Water Resources. The commission shall determine the schedule  
14 for amortizing the overcollection or undercollection in the  
15 balancing account to ensure that the 5 percent threshold is not  
16 exceeded. After January 1, 2006, this adjustment shall occur when  
17 deemed appropriate by the commission consistent with the  
18 objectives of this section.

19 (4) Moderate the price risk associated with serving its retail  
20 customers, including the price risk embedded in its long-term  
21 supply contracts, by authorizing an electrical corporation to enter  
22 into financial and other electricity-related product contracts.

23 (5) Provide for just and reasonable rates, with an appropriate  
24 balancing of price stability and price level in the electrical  
25 corporation's procurement plan.

26 (e) The commission shall provide for the periodic review and  
27 prospective modification of an electrical corporation's procurement  
28 plan.

29 (f) The commission may engage an independent consultant or  
30 advisory service to evaluate risk management and strategy. The  
31 reasonable costs of any consultant or advisory service is a  
32 reimbursable expense and eligible for funding pursuant to Section  
33 631.

34 (g) The commission shall adopt appropriate procedures to ensure  
35 the confidentiality of any market sensitive information submitted  
36 in an electrical corporation's proposed procurement plan or  
37 resulting from or related to its approved procurement plan,  
38 including, but not limited to, proposed or executed power purchase  
39 agreements, data request responses, or consultant reports, or any  
40 combination, provided that the Office of Ratepayer Advocates and

1 other consumer groups that are nonmarket participants shall be  
2 provided access to this information under confidentiality  
3 procedures authorized by the commission.

4 (h) Nothing in this section alters, modifies, or amends the  
5 commission's oversight of affiliate transactions under its rules and  
6 decisions or the commission's existing authority to investigate and  
7 penalize an electrical corporation's alleged fraudulent activities,  
8 or to disallow costs incurred as a result of gross incompetence,  
9 fraud, abuse, or similar grounds. Nothing in this section expands,  
10 modifies, or limits the State Energy Resources Conservation and  
11 Development Commission's existing authority and responsibilities  
12 as set forth in Sections 25216, 25216.5, and 25323 of the Public  
13 Resources Code.

14 (i) An electrical corporation that serves less than 500,000 electric  
15 retail customers within the state may file with the commission a  
16 request for exemption from this section, which the commission  
17 shall grant upon a showing of good cause.

18 (j) (1) Prior to its approval pursuant to Section 851 of any  
19 divestiture of generation assets owned by an electrical corporation  
20 on or after the date of enactment of the act adding this section, the  
21 commission shall determine the impact of the proposed divestiture  
22 on the electrical corporation's procurement rates and shall approve  
23 a divestiture only to the extent it finds, taking into account the  
24 effect of the divestiture on procurement rates, that the divestiture  
25 is in the public interest and will result in net ratepayer benefits.

26 (2) Any electrical corporation's procurement necessitated as a  
27 result of the divestiture of generation assets on or after the effective  
28 date of the act adding this subdivision shall be subject to the  
29 mechanisms and procedures set forth in this section only if its  
30 actual cost is less than the recent historical cost of the divested  
31 generation assets.

32 (3) Notwithstanding paragraph (2), the commission may deem  
33 proposed procurement eligible to use the procedures in this section  
34 upon its approval of asset divestiture pursuant to Section 851.

35 (k) The commission shall direct electrical corporations to include  
36 in their proposed procurement plans the use of any nonzero  
37 integration cost adders determined pursuant to clause (v) of

1 subparagraph (A) of paragraph (4) of subdivision (a) of Section  
2 399.13.

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